



Office of the Chair

UNITED STATES OF AMERICA  
Federal Trade Commission  
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**Remarks of Chair Lina M. Khan  
Charles River Associates Conference  
Competition & Regulation in Disrupted Times  
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**March 31, 2022**

Thanks so much, Cristina, for the invitation and the introduction. It is terrific to be here with you all, in this moment of both remarkable opportunity and urgency. I am especially delighted to be here with a host of fellow enforcers who serve as critical partners to the FTC, including AAG Kanter, who brings forward-thinking leadership to the Antitrust Division, state attorneys general, and of course, our international counterparts.

By many measures, this is a moment marked by great progress. After two decades during which we witnessed an open and dynamic internet morph into a set of fiefdoms controlled by a small number of digital giants, we now see transatlantic efforts to tackle this new era of monopoly power.

Last July, President Biden signed an Executive Order renouncing a 40-year policy that had permitted markets to concentrate and competition to weaken<sup>1</sup> and adopting a “whole-of-government” approach to competition policy as a central part of the administration’s agenda.<sup>2</sup> In Congress, a bipartisan group of lawmakers in both the House and the Senate have introduced a series of bold and sweeping bills to loosen the grip of online gatekeepers and to open up digital markets to competition. And just last week, of course, we saw the EU finalize the Digital Markets Act, a significant proposal to promote fair access to markets controlled by digital gatekeepers.<sup>3</sup>

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<sup>1</sup> Remarks by President Biden At Signing of An Executive Order Promoting Competition in the American Economy (July 9, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/09/remarks-by-president-biden-at-signing-of-an-executive-order-promoting-competition-in-the-american-economy/> (“Forty years ago, we chose the wrong path, in my view, following the misguided philosophy of people like Robert Bork, and pulled back on enforcing laws to promote competition. We’re now 40 years into the experiment of letting giant corporations accumulate more and more power. And where- — what have we gotten from it? Less growth, weakened investment, fewer small businesses. Too many Americans who feel left behind. Too many people who are poorer than their parents. I believe the experiment failed. We have to get back to an economy that grows from the bottom up and the middle out.”).

<sup>2</sup> Exec. Order No. 14,036, 86 Fed. Reg. 36,987 (July 14, 2021).

<sup>3</sup> Press Release, European Parliament, Deal on Digital Markets Act: EU rules to ensure fair competition and more choice for users (Mar. 24, 2022), <https://www.europarl.europa.eu/news/en/press-room/20220315IPR25504/deal-on-digital-markets-act-ensuring-fair-competition-and-more-choice-for-users>.

The speed and breadth of these reform efforts owe much to many people in this room, who have led the effort to educate the public and policymakers about the new threats posed by dominant digital platforms and the heavy cost of inaction.

Major challenges, however, remain, and there is much work to be done. While we see increasing convergence on an overarching diagnosis, enforcers are still grappling daily with key questions around how to update our tools to detect, analyze, and remedy unlawful conduct in digital markets.

The growing adoption of a newer set of technologies—including voice assistants, cloud computing, and virtual reality—impel us to learn from past missteps and prevent incumbents from unlawfully capturing control over emerging markets. Enforcers pursue this work in an environment where dominant incumbents can deploy their muscle to distract, thwart, and delay.

At stake is both the future shape of our economy and the health of our democracy.

While the stakes are high and the challenges significant, the task is one that the Federal Trade Commission is particularly well-suited to tackle. Congress created the FTC in 1914 against the backdrop of an industrial revolution that had delivered sweeping technological advances but also enabled intense consolidation in industries ranging from oil and steel to sugar and tobacco. Given deep national unease about the unchecked power that these monopolists could wield, lawmakers tasked the FTC with preventing unfair methods of competition. Recognizing that business tactics would shift with new technologies and evolving methods of evasion, Congress gave the FTC tools to keep pace with market trends and adjust its enforcement accordingly.

Today, distinct features of digital technologies have ushered in new market dynamics and business strategies that require us to update our approach once again. While dominant networks are not new, several aspects of the digital economy have altered certain core capabilities and incentives. Minimal marginal costs have enabled digital platforms to grow larger and more quickly, while network effects and high barriers to entry have protected incumbents and led certain markets to tip towards a single winner. Data feedback loops, meanwhile, have similarly conferred enormous advantages on early movers, incentivizing firms to prioritize expanding and securing a large user base as quickly as possible. The ability to surveil users, furthermore, has let firms provide services for zero dollars while monetizing user data, a business model that incentivizes endless tracking and hoovering up of data, while also providing platforms with another way to draw large groups of users to scale quickly. Digital platforms can also deploy surveillance techniques to spot and monitor potential threats, equipping incumbents to defend and maintain their dominance in a highly targeted manner.

In several areas, policymakers and enforcers have already made significant strides by identifying a common set of tactics used by digital gatekeepers and updating their approach to tackle these new realities.

Across markets, dominant digital platforms have come to capture control over key arteries of commerce and communications. After achieving a gatekeeper position, these firms

can exercise their power in a host of ways. They can exploit their leverage over dependent users by increasing the price of access, such as by hiking fees, demanding valuable data, or imposing oppressive contractual terms. Gatekeepers can also engage in a set of defensive tactics to protect their control, knocking out perceived or actual rivals through buying them out or just cutting them off. And we've also seen gatekeepers use their privileged position to advantage additional parts of their business, be it through self-preferencing, tying, or a range of other tactics.

Enforcers and lawmakers have responded to this playbook, recognizing that practices like self-preferencing and blocking interoperability are or should be unlawful. In tackling these tactics, policymakers generally focus on promoting both contestability and fair access to markets that gatekeepers already control. Given that innovation in high-tech markets often emerges from upstarts whose services may rely on the very platforms they threaten to displace, promoting fair access and contestability are critical goals.

Increasingly, however, it is clear that focusing on these goals alone won't be enough. There are three areas where additional attention and work is especially needed.

First, a striking feature of the new gatekeepers is their sprawling and extensive economic reach. While the conglomerates of the industrial era generally spun off disparate divisions to concentrate on core business lines, dominant digital platforms today enjoy positions in a broad array of sectors beyond their core markets, spanning pharmacies, payment systems, automobiles, undersea cables, and Hollywood, to name just a few. The ever-expanding reach of these same few firms reveals how digital markets scramble traditional dynamics, enabling incumbents to benefit from mutually reinforcing positions across distinct markets.

This means that a dominant platform may serve as a key trading partner across *several* lines of its business—giving it multiple nodes of dependency, any one of which it can exploit to dictate terms and get its way. The multi-dimensional ways in which different lines of business may be interlinked can also render outdated frameworks that still try to analyze relationships as “horizontal” or “vertical,” straining in particular current approaches to investigating mergers. Finally, a dominant platform's abundant cash flow from core lines of business can finance its entry into any number of nascent and emerging markets, enabling it to selectively monetize operations in distinct ways that are not viable for any other participant in those same markets. It is worth asking what this dynamic means for competition and whether it is conducive to the type of innovation we seek to promote.

Second, the particular business strategies that digital markets reward require us to look beyond concepts like foreclosure and exclusion when trying to cognize harm, especially in the context of merger investigations. For example, when a dominant platform pursues an acquisition as a way to overtake emerging rivals in still-nascent markets, foreclosure may not be a likely tactic. Instead of cutting off access, the strategy requires swift integration and rapid scaling of the acquired product so that the firm can quickly establish a strong foothold. The deal can still facilitate the maintenance of a monopoly—and therefore be illegal—but the precise mechanism may look different from some of the traditional concepts that antitrust enforcers look to.

Similarly, as the FTC noted in its antitrust lawsuit against Facebook, the imperative to scale quickly and build a large user base can lead a platform to encourage and lure third parties

to interconnect with its network, only to later impose restrictive conditions or cut them off entirely.<sup>4</sup> This type of “open first, closed later” scheme does not quite fit a traditional “refusal to deal” framework, and the tactic can be anticompetitive even if the platform did not have a duty to deal.

Third, promoting both competition and the rule of law in digital markets will require us to ensure that the business strategies that these markets reward are also directly informing our remedies. The imperative to scale and amass a vast trove of valuable data can mean that unlawful tactics that expedite growth may be treated as a worthy cost of doing business. Given that the gains from achieving an early lead and locking up a market can be enormous, swift intervention and remedies that fully cure the harm are critical. In some instances, depriving lawbreakers of the fruits of their misconduct and the instrumentalities used in the violation may be necessary to prevent recidivism.

These are just some of the many challenges that we currently face, and we have a series of initiatives underway at the FTC to start meeting them. One critical project is our shared effort with the DOJ to revise the merger guidelines, where we plan to ensure that our tools and frameworks are catching up to some of these market realities.

While the road ahead will be long, I am heartened by the remarkable degree of agreement we now see among enforcers and lawmakers across jurisdictions, who recognize the critical stakes of fighting monopoly power in the digital age. I firmly believe that collaboration among enforcers has enormous benefits, and I look forward to working closely with our like-minded counterparts to achieve our shared mission.

Thank you.

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<sup>4</sup> First Amended Compl. for Injunctive and Other Equitable Relief ¶ 5, *Federal Trade Commission v. Facebook, Inc.*, No. 1:20-cv-03590 (D.D.C. 2021).